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The Literature of Law

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ness at and around Atlanta. Occasionally I took part, also, in short terms of camp duty as a member of the militia. In 1864, about the time General Sherman left Atlanta on his march to the sea, I was appointed to the office of Supreme Court Reporter. After reporting two volumes, the 34th and 35th Ga., I resigned that office. This was in the spring of 1867. From that time till I was appointed to the Supreme Bench in 1875, I practised law continuously in Atlanta.

Such education as I received in my boyhood was acquired at the village academy of my native

county, an institution of meagre resources and a limited range of instruction. Although in the course of a somewhat studious lifetime I have added considerably to my early stock, the plain truth is that while not illiterate, I am destitute of real learning, lay or legal. My highest aspiration, so far as this life is concerned, is to do good judicial work. Service is better than salary, duty more inspiring than reward. My devotion to law is the spiritual consecration of a loving disciple, a devout minister.

L. E. BLECKLEY.

THE LITERATURE OF LAW.

BY ERNEST W. HUFFCUT.

THE divorce of law and literature seems in these latter days to be wellnigh complete, and one never hears that a professor of literature in our schools of polite learning refers his students to legal literature for examples of elegance or eloquence; yet historically it is probably true that no two branches are more closely united and interwoven. Indeed, it may not be too much to say that the earliest and most characteristic and original literature in all languages is the literature of law. It is, moreover, not only literature but the highest form of literature,—poetry. Reference has already been made once or twice in the pages of the "Green Bag" to this early connection between law and poetry; but no one, I think, has pointed out the reason for it. There is, however, an excellent reason why all early literature is in verse, and why much of it is concerned with law. Of all the knowledge of mankind which it is most essential for a people to preserve, the knowledge of their laws is of the first importance. In an age when there is no written composition, this knowledge must pass from generation to generation by verbal transmission. But the enormous burden to the memory of a great and growing body of law, and the danger of trans-

mitting verbal errors which would work great mischief in the application of legal rules, suggest the reason why a rhythmic verse should be adopted as the vehicle for such transmission. Such a form aids the memory, and at the same time guards against a corrupt rendering of the laws. It is therefore naturally adopted by primitive peoples, and where written composition succeeds to oral tradition the forms of the latter are preserved and perpetuated.

These considerations explain much that is curious and grotesque in both law and literature. They aid us to understand why the versified literature of ancient India contains in the same measured rhythm its religion, its ethics, and its laws; why many of the laws of Solon were preserved in his Elegiacs; why the ancient Irish code, the Senchus Mor, is partly in verse; why among Germanic peoples "all solemn legal proceedings were accompanied by poetry;" and why in every system of law many traces of these early poetic forms are yet to be found. According to Strabo, the Turditans, the most cultivated tribe of the Ibernians, possessed monuments inscribed with laws in verse reputed to be six thousand years old. In the primitive Roman law the *carmina* are

supposed to have been preserved in the Saturnian rhythm; while in a more cultured age, according to Teuffel, "the more national a poet is, the more prominent the position the law holds in his writings;" and it is related of Terence that he regarded a play of Luscius as of small account, because of a flagrant error in it in a statement of the civil law. It must be confessed, however, that this last criticism is over-harsh, and might result in the condemnation of half the plays of modern times. The "stage law" of Mr. Jerome K. Jerome seems, after all, to be a piece of necessary literary mechanics.

Scherer, in his "History of German Literature," has an interesting chapter on the primitive literature of the Aryans, and especially of the Germanic branch. A quotation from Mrs. Conybeare's translation will not be inapt in this connection:—

"There were no written laws, but the priest proclaimed the fixed laws as approved by the people. He was the 'mouthpiece' and guardian of the laws. These promulgations of the law often described in detail the circumstances of actual life which the law covered; and this gave rise to real poetry, whose charm lingers even in the later written code."

As is well known, early Germanic poetry is alliterative; and this feature still persists in much of our modern legal literature, as in the phrases "house and home, spick and span, weal and woe, hand and heart, stock and stone, kith and kin, bed and board, wind and weather," etc. Scherer gives an example of a sentence of banishment by which the condemned is to be a fugitive and an outcast everywhere and always, — wheresoever fire burns and grass is green, child cries for its mother or mother hears a child; as far as ship sails, shield glitters, sun melts snow, feather flies, fir-tree flourishes, hawk flies through the long spring day; while the wind lifts its wings; wheresoever the welkin spreads, or the world stands fast, winds roar, and waters flow into the sea. The old forms

of oaths were in an alliterative verse, an echo of which remains in the modern phrase, "the truth, the whole truth, and nothing but the truth!"

Early law had not only a poetic form but a dramatic form as well. Sir Henry Maine has shown in his "Ancient Law," and more fully in his "Early History of Institutions," that the technical formalities in the primitive law of procedure are simply "a dramatization of the Origin of Justice." Thus, in the venerable *Actio Sacramenti* of the Romans, there was a pretence of a quarrel between two armed men, of the accidental appearance of the prætor, and of a submission by the disputants to his arbitration; and if by chance the prætor should fail thus happily to appear, then our primitive wranglers lay a wager on the issue of their quarrel quite like a pair of modern wranglers. The dialogue which took place in this legal drama has developed into the modern art of pleading. It was poetic in form, and came to have a semi-sacred meaning to pleaders, and particularly to the special pleaders who delighted to get an adversary nonsuited for suing for a bull instead of a "leader of the herd," or a goat instead of a "browser upon leeks." Similar dramas were also enacted in the English law of procedure, — as in the action of ejectment and in the procedure by fines and recoveries. In the making of contracts and the conveyance of property, other survivals of these ancient legal dramas persisted down to a very late day, while many marriage ceremonies preserve hints of the early drama of chase and capture. How much literature may owe to these mimic combats and proceedings one can hardly venture to assert; but it is surely safe to ascribe to them some influence in the growth of the dramatic art.

Aside from its poetic form, legal writing may also claim some consideration as literature. Teuffel declares that "jurisprudence is the only part of literature which was developed by the Romans in a manner throughout national." Sir Henry Maine

holds a similar opinion, and while expressing surprise that so little is known of "the chief branch of Latin literature," declares that "it was the only literature of the Romans which has any claim to originality; it was the only part of their literature in which the Romans themselves took any strong interest, and it is the one part which has profoundly influenced modern thought." In the history of English law not so much can be said for its literature, but nevertheless much of that literature is far from mean. The early literature is in Latin or Norman-French, from the influence of which the lawyers were long in escaping. Of the modern legal literature, that of Blackstone, Kent, Maine, Pollock, and some others, is worthy to stand beside the best literature of theology and science, as specimens of style perfectly fitted to its purpose. Of case-law writers the list is too long even to begin an enumeration; but among recent jurists the names of Sir George Jessel and Francis M. Finch will occur at once to all readers of the reports as two

authors whose opinions are as classic in style as the essays of Lowell or Curtis.

This discussion has led us far afield, but it may serve to make clearer a fact too often forgotten, — that law touches at some point every conceivable human interest, and that its study is, perhaps above all others, precisely the one which leads straight to the humanities. It is not strange, in view of its history, that so many of its followers stray into the more attractive fields of literary art. It is not strange that so many literary artists seek in it the subject-matter of their art, or that the greatest poem of the age, "The Ring and the Book," should reproduce the archaic phenomenon of a poetic legal treatise. And perhaps we may now be able to appreciate better than ever before, the admirable restraint which the accomplished editor of the "Albany Law Journal" has exhibited in not turning the entire body of English law into what would doubtless be instantly welcomed as the Great English Epic.

